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Chairman: Mr. Salvador P. LOPEZ (Philippines).

AGENDA ITEM 35

Draft International Covenants on Human Rights (E/2573, annexes I-III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/4789 and Corr.1, A/C.3/L.903, A/C.3/L.939/Rev.1, A/C.3/L.940/Rev.1, A/C.3/L.941-943) (continued)

ARTICLE 22 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mr. ESPEJO (Philippines) said that he had been authorized to state, on behalf of its fifteen sponsors, that the text of the joint amendment (A/C.3/L.939/Rev.1) to paragraph 4 of article 22 might be interpreted as permitting contracting States to take appropriate measures progressively to assure the equality of the spouses as to marriage, during marriage and at its dissolution.

2. The CHAIRMAN recalled that it was the French text of the draft amendment which had given rise to difficulty and he invited French-speaking delegations to express their views on the Philippine representative's statement.

3. Mr. BOUQUIN (France) said that while there was no doubt that a satisfactorily drafted text was preferable to an unsatisfactory one accompanied by an explanation, nevertheless, in view of the statement of the Philippine representative on behalf of the sponsors, to which reference might in future be made if necessary, his delegation could accept and would vote for the revised joint amendment in its present form.

4. He would only add that in raising the point (1093rd meeting), he had been convinced that it was one of substance. As Mr. René Cassin, speaking on behalf of the French delegation, had advised the Commission on Human Rights in 1953, it was pointless to include in the draft Covenants provisions requiring States to bring about immediately changes of conditions which in centuries they had been unable to achieve.

5. Mr. CAPOTORTI (Italy) associated his delegation with those remarks. Although the linguistic problem affecting the French text of the revised amendment had still not been fully resolved, the question of substance had now been settled since the sponsors were agreed that the text should be interpreted to permit

progressive action. On that understanding, his delegation was ready to accept the amendment.

6. Mr. ZULOAGA (Venezuela) was grateful for the Philippine representative's statement. It might perhaps be useful for other representatives so interpreting the amendment to say so in their explanations of vote.

7. Mr. BAHNEV (Bulgaria) said that the Bulgarian Constitution and family law provided for the full equality of men and women in all fields of life, the equality of the spouses in marriage and the equal treatment of children, whether born in or out of wedlock.

8. His delegation found certain defects in article 22 in its present form. Paragraph 2, for example, did not contain the phrase "without any limitation due to race, nationality or religion", used in the comparable paragraph of article 16 of the Universal Declaration of Human Rights (General Assembly resolution 217 (III)), on which the present article was based. The representative of Venezuela had raised that point (1091st meeting), but it had been argued in reply that it would be undesirable to repeat a provision already contained in article 2, paragraph 1 of the present draft Covenant. That argument was not conclusive, for it applied equally to article 16 of the Universal Declaration, and article 2 of that document also contained an anti-discrimination clause.

9. Paragraph 2 should also, in his delegation's view, have stressed that the spouses must have equal rights and responsibilities. That was not a matter simply of advancing the feminist movement. It was, rather, a question of what was appropriate in the context of the general social revolution of the times. The present was a period of the throwing off of shackles of all kinds. The Committee was bent, in the draft Covenants, on proclaiming the rights of human beings in all spheres.

10. Where the social factors which the Committee was now considering were concerned, there was no room for qualifications and restrictions. The family, the basic unit of society, could make its proper contribution to the growth of that society only if it rested on a full understanding between equal partners.

11. It had been said that laws could not change existing conditions; they could, however, help to induce changes in those conditions. His delegation had been opposed to the original Philippine amendment (A/C.3/L.941), even as it was opposed to article 49, paragraph 2 of the draft Covenant, for it did not think it necessary to provide for gradual action with regard to article 22.

12. Nevertheless, it would support the fifteen-Power amendment and the article as a whole.

13. The Bulgarian delegation considered that article 22 should contain a provision for the protection of children, whether born in or out of wedlock, upon

the dissolution of a marriage, and it therefore supported the retention of the second sentence of paragraph 4. He noted that the revised three-Power amendment to that sentence (A/C.3/L.940/Rev.1) was inferior to the original text, since it no longer required such provision to be made by law. If the sponsors still intended that the text should be interpreted in that way, perhaps they could so inform the Committee, for that would make their amendment more attractive to a number of delegations.

14. He also supported the Polish proposal (A/C.3/L.943) for a separate article dealing with the rights of children in general.

15. The CHAIRMAN pointed out that in the Spanish text of the fifteen-Power amendment there was an error in the copying of the words transposed from the original Philippine amendment: the text should therefore read "las medidas apropiadas" instead of "las medidas necesarias".

16. Mr. COX (Peru) believed that the Spanish text of the fifteen-Power amendment was entirely satisfactory as it stood, and fully reflected the meaning and spirit of the original. It was, moreover, in harmony with article 2, paragraph 2 of the draft Covenant, where the word "necessary" was used, and in keeping with the Universal Declaration of Human Rights.

17. The CHAIRMAN ruled that the Spanish text of the fifteen-Power amendment should read: "Los Estados Partes del presente Pacto tomarán las medidas apropiadas...".

18. Mrs. BERNARDINO CAPPÀ (Dominican Republic) and Mr. DOMINGUEZ CABALLERO (Panama), while not formally challenging the Chairman's ruling, supported the views expressed by the representative of Peru.

19. Mrs. ROSSIDES (Cyprus) stated that her delegation would support the first three paragraphs of article 22 in their original form.

20. Paragraph 4 as drafted implied a vague and gradual development towards equality of rights and responsibilities. It was proper that women, being no longer tied to the home, should be placed on an equal footing with men; however, differences between countries should not be overlooked and, since certain changes might do more harm than good, her delegation, while supporting the principle involved, advocated some degree of caution in imposing obligations on national legislations. The fifteen-Power amendment was more flexible than the original text and would be less difficult for all States to apply.

21. She disliked the words "at its dissolution" in paragraph 4, as implying that dissolution was a natural consequence of marriage. The wording "at any eventual dissolution" would be more appropriate.

22. The three-Power amendment did not improve the original text and, if designed to include illegitimate children, did not serve its purpose, since it applied specifically in the case of dissolution of marriage and could refer only to the children of the marriage.

23. Mr. TEKLE (Ethiopia) recalled that his delegation had clearly stated its position on the question under discussion during the debate (1064th meeting) on the draft Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages. He would therefore comment only briefly on article 22 of the draft Covenant, the first three paragraphs of which his delegation could accept.

24. Ethiopia had co-sponsored the fifteen-Power amendment to paragraph 4 in the hope that it would introduce a positive element acceptable to all delegations, especially after the incorporation of the compromise formula proposed by the Philippines.

25. The fact that, in some parts of the world, women still occupied an inferior position was largely due to the long-standing and pervasive effect of religious doctrine; the situation was not the legacy of Africa and Asia alone, although the extension of the democratic way of life and of education in highly civilized countries had had a tremendous impact on the emancipation of women there. It was nevertheless possible to look to the future with optimism; many States were becoming more responsive to progressive ideas, and there was no reason to believe that any particular aspect of social life would remain static.

26. Mrs. COCEA-BREDICEANU (Romania) affirmed her delegation's full adherence to the principles enunciated in article 22. The right of the family to protection by the State, the equal rights of the spouses as to marriage and the protection of children were fully recognized in her country by the Constitution and by special legislation.

27. The first three paragraphs of article 22 appeared satisfactory.

28. Where paragraph 4 was concerned, many traditions, customs and practices relating to the family were an impediment to progress and were no longer supported by majority opinion in modern society. Despite the social, economic and political revolutions of recent decades, some European legislations were still based on the Napoleonic Code, and women were regarded by the law as "minors" subject to the authority of their husbands. The Charter of the United Nations clearly enunciated the principle of equality between men and women while, under article 3 of both draft Covenants, States undertook to ensure the equal right of men and women to enjoyment of all the rights set forth therein. Paragraph 4 of article 22 as drafted by the Commission on Human Rights, however, lacked the provisions necessary to ensure equality of rights as to marriage. The compromise apparent in the article was unnecessary, since article 49, paragraph 2 already provided that the implementation of article 22, paragraph 4 should be progressive.

29. The fifteen-Power amendment, for which her delegation would vote, recognized and proclaimed equality of rights as between women and men in regard to marriage.

30. The Polish proposal for a new article, referring to the rights of the child, should be adopted by the Committee, since the text was in accordance with the principles enunciated in the Declaration of the Rights of the Child adopted by the General Assembly at its fourteenth session (General Assembly resolution 1386 (XIV)).

31. Mr. KASLIWAL (India), referring to the Bulgarian representative's statement, said that the omission of the words "the law" in the three-Power amendment was merely a drafting change; the idea of the original text had been fully retained. If the fifteen-Power amendment was adopted, the reference to legislation in the first sentence of paragraph 4 would be removed, and to mention the law in the second sentence would then seem inappropriate. Apart from that, the three-Power text was more general than the original and

would cover, not only legislation, but action by the courts for the protection of children.

32. Mrs. AFNAN (Iraq) expressed strong support for the objectives of article 22, which had a far wider scope than the draft Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages; it also concerned the right to found a family and the equality of rights and responsibilities relating to a particular form of human relationship. Paragraph 1 was, therefore, a useful preface which her delegation would support.

33. Since marriage was being considered in the context of founding a family, the categorical requirement of the free and full consent of the intending spouses in paragraph 3 was essential; but she objected to the extreme vagueness of the term "marriageable age" in paragraph 2. To place the emphasis on free and full consent without specifying a minimum age was illogical, for consent could not be valid unless the intending spouses had the minimum maturity necessary to give or withhold it.

34. The difficulties which had arisen in connexion with paragraph 4 were understandable, seeing that discrimination against women was not confined to any one race or culture, but was universal and deeply entrenched. She believed, however, that fears that it could not be eradicated were without substance. When, some years earlier, it had drafted article 22, the Commission on Human Rights had been composed of a small number of highly developed countries representing a few major cultures; yet it had been unable to produce an agreed text containing stronger language than "directed towards".

35. The Third Committee, in which many cultures and economic and social systems were represented, had already gone beyond that compromise; at the same time, national independence movements had led to great advances in the emancipation of women, and further progress would be achieved before the draft Covenant was ratified. Experience in Iraq had shown that many ancient customs could be changed overnight without weakening national traditions, because the best way to teach youth to respect and honour such traditions was to clear away the extraneous matter that had gathered around them and to return to the fundamental principles on which they were based. It was the Third Committee's duty, in drafting the Covenants, not merely to follow public opinion and national legislations, but to make an attempt to achieve the aims of the Charter.

36. Her delegation could have accepted the fourteen-Power amendment (A/C.3/L.939); that text had been improved by the incorporation of the Philippine sub-amendment, which introduced a wording much more acceptable to many delegations. Different opinions had been expressed concerning the principle of equality of rights and responsibilities, especially the latter. In her view, the essence of equality was a balance between rights and responsibilities. In the family, equality meant a division of responsibilities, which had varied from society to society and from period to period; the essential thing was the equality of men and women before the law. Although, under Islamic culture, women were not legally treated as minors, the corruption of the social system and the excessive protection of women had led in the end to their segregation; that was why many women were willing to exchange privileges for equality.

37. Mrs. ROUSSEAU (Mali) noted that delegations seemed to be in basic agreement with the amendments proposed to article 22. She accordingly moved that the debate should be closed and that the Committee should proceed to a vote.

38. Mrs. AFNAN (Iraq) and Mr. WAN MUSTAPHA (Federation of Malaya) opposed the motion.

The motion was rejected by 32 votes to 8, with 28 abstentions.

39. Mr. DARAI (Iran) remarked that the Charter of the United Nations, in its two references to the equality of men and women, sought a compromise between the ideal situation and the practical and legal circumstances confronting States. While the Preamble reaffirmed faith in the equal rights of men and women, thus stating the ideal, Article 1, paragraph 3 recognized the practical difficulties by speaking simply of "promoting and encouraging" human rights without distinction as to sex. Thus it might be said that the Charter offered to Governments the possibility of leading their peoples towards the progressive achievement of ultimate social objectives.

40. The Commission on Human Rights had attempted to spell out that basic position in article 22 of the draft Covenant. The article stated the principle of equality but simultaneously recognized the need for gradual advancement, a matter which was further stressed in article 49, paragraph 2. It would be illogical for the Committee to close the door which the Charter of the United Nations and the Commission on Human Rights had so wisely left open to Governments, and it was on that basis that his delegation had favoured the original text.

41. Nevertheless, understanding that the fifteen-Power amendment implied the notion of progressive implementation and would be widely acceptable, his delegation was prepared to support it.

42. Miss KUBOTA (Japan) said that, as marriage practices and traditions varied enormously from country to country, the text of article 22 should lend itself to flexible interpretation, and she therefore endorsed the approach taken in the original article. She was in favour of maintaining paragraph 1, which was derived from the Universal Declaration of Human Rights and provided a basis for the succeeding paragraphs.

43. In supporting paragraph 2, she understood "marriageable age" to mean the minimum age of marriage to be set by law in each State.

44. She would vote for paragraph 3 and also for the fifteen-Power amendment to paragraph 4, which made no substantive change but was more precisely worded than the original.

45. While she would support the three-Power amendment, she understood that the protection granted was to be strictly limited to legitimate children, as the entire article was based on the assumption of lawful marriage.

46. Miss KRACHT (Chile) observed that efforts to arrive at a generally acceptable text, praiseworthy as they were, must not serve to vitiate a principle or lay it open to divergent interpretations.

47. The principle stated in the first sentence of article 22, paragraph 4 should be clear and unambiguous. In that regard, she would have preferred the original fourteen-Power amendment, which took into account the considered opinion of the Commission

on the Status of Women. If the explanation given earlier in the meeting by the Philippine representative seemed unsatisfactory upon closer examination, she would ask for a separate vote on the words incorporated into the revised amendment submitted by the fifteen Powers and would abstain on them.

48. Much had been said in favour of a progressive application of the provisions of paragraph 4. She did not agree and believed that the Committee should not approve a text exempting States from the enactment of appropriate legislation. She was not, however, in favour of precipitate action. The speed of the process would naturally depend on the circumstances in each country. But the forward-looking instrument with which the Committee was dealing should provide a stimulus for national legislations, and hence it must clearly state the rights involved and the obligations of States in ensuring their enjoyment.

49. With respect to the second sentence of paragraph 4, she believed that provisions concerning the

rights of children should be inserted, as had been done in the draft Covenant on Economic, Social and Cultural Rights. The present instrument might deal with such matters as filiation, nationality, inheritance, guardianship or criminal liability, in addition to such broad questions as discrimination. She therefore welcomed the Polish proposal, with which she was in general agreement.

50. She believed, however, that it would be desirable to speak of the adolescent as well as of the child, for the important period between childhood and maturity was all too often ignored. She hoped that room would be found in the draft Covenant for provisions protecting young people, having due regard for the principles already embodied in the Declaration of the Rights of the Child.

The meeting rose at 1.5 p.m.